

Assembly Bill No. 457

CHAPTER 109

An act to amend Sections 3084 and 3146 of the Civil Code, relating to liens.

[Approved by Governor August 5, 2009. Filed with
Secretary of State August 6, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

AB 457, Monning. Liens.

The California Constitution gives workers the right to a mechanic's lien for the value of labor and materials provided for the improvement of real property, and authorizes the Legislature to provide for the speedy and efficient enforcement of these liens. Existing law defines claim of lien in this regard, requiring it to contain specified information. Existing law provides that a lien claimant, after filing of the complaint to enforce the lien in the proper court, may record in the office of the county recorder where the property is located a notice of pending proceedings, and from the time of the recording a purchaser or encumbrancer of the property is deemed to have constructive notice of the pendency of the action.

This bill would provide that the definition of "claim of lien" is also the definition of "mechanic's lien" and would include within this definition a Notice of Mechanic's Lien, which would contain specified information regarding the legal effect of the lien. The bill would require the mechanic's lien and the Notice of Mechanic's Lien to be served, as specified, on the owner or reputed owner of the property, or on the construction lender or the original contractor if those parties cannot be served. The bill would require a proof of service affidavit to be completed and signed by the person serving the Notice of Mechanic's Lien, and it would be included as part of the mechanic's lien or claim of lien. The bill would provide that a failure to serve the mechanic's lien, including the Notice of Mechanic's Lien, as required, would cause the mechanic's lien to be unenforceable as a matter of law.

The bill would also revise the permissive provisions regarding the recording of the complaint to enforce the lien, as described above, to make them mandatory. The bill would also make correctional, style, and conforming changes.

The people of the State of California do enact as follows:

SECTION 1. Section 3084 of the Civil Code is amended to read:

3084. (a) “Claim of lien” or “mechanic’s lien” means a written statement, signed and verified by the claimant or by the claimant’s agent, containing all of the following:

(1) A statement of the claimant’s demand after deducting all just credits and offsets.

(2) The name of the owner or reputed owner, if known.

(3) A general statement of the kind of labor, services, equipment, or materials furnished by the claimant.

(4) The name of the person by whom the claimant was employed or to whom the claimant furnished the labor, services, equipment, or materials.

(5) A description of the site sufficient for identification.

(6) A proof of service affidavit completed and signed by the person serving the Notice of Mechanic’s Lien pursuant to subdivision (c). A “proof of service affidavit” is an affidavit of the person making the service, showing the date, place, and manner of service and facts showing that the service was made in accordance with this section. The affidavit shall show the name and address of the person or persons upon whom a copy of the mechanic’s lien and the Notice of Mechanic’s Lien was served, and, if appropriate, the title or capacity in which he or she was served.

(7) The following statement, printed in at least 10-point boldface type. The letters of the last sentence shall be printed in uppercase type, excepting the Internet Web site address of the Contractors’ State License Board, which shall be printed in lowercase type:

NOTICE OF MECHANIC’S LIEN
ATTENTION!

Upon the recording of the enclosed MECHANIC’S LIEN with the county recorder’s office of the county where the property is located, your property is subject to the filing of a legal action seeking a court-ordered foreclosure sale of the real property on which the lien has been recorded. That legal action must be filed with the court no later than 90 days after the date the mechanic’s lien is recorded.

The party identified in the mechanic’s lien may have provided labor or materials for improvements to your property and may not have been paid for these items. You are receiving this notice because it is a required step in filing a mechanic’s lien foreclosure action against your property. The foreclosure action will seek a sale of your property in order to pay for unpaid labor, materials, or improvements provided to your property. This may affect your ability to borrow against, refinance, or sell the property until the mechanic’s lien is released.

BECAUSE THE LIEN AFFECTS YOUR PROPERTY, YOU MAY WISH TO SPEAK WITH YOUR CONTRACTOR IMMEDIATELY, OR CONTACT AN ATTORNEY, OR FOR MORE INFORMATION ON MECHANIC’S LIENS GO TO THE CONTRACTORS’ STATE LICENSE BOARD WEB SITE AT www.cslb.ca.gov.

(b) A mechanic's lien or claim of lien in otherwise proper form, verified and containing the information required by this section shall be accepted by the recorder for recording and shall be deemed duly recorded without acknowledgment.

(c) (1) The mechanic's lien and the Notice of Mechanic's Lien described in this section shall be served on the owner or reputed owner. Service shall be made as follows:

(A) For an owner or reputed owner to be notified who resides in or outside this state, by registered mail, certified mail, or first-class mail, evidenced by a certificate of mailing, postage prepaid, addressed to the owner or reputed owner at the owner's or reputed owner's residence or place of business address or at the address shown by the building permit on file with the authority issuing a building permit for the work, or as otherwise provided in subdivision (j) of Section 3097.

(B) If the owner or reputed owner cannot be served by this method, then the notice may be given by registered mail, certified mail, or first-class mail, evidenced by a certificate of mailing, postage prepaid, addressed to the construction lender or to the original contractor.

(2) Service by registered mail, certified mail, or first-class mail, evidenced by a certificate of mailing, postage prepaid, is complete at the time of the deposit of that first-class certified or registered mail.

(d) Failure to serve the mechanic's lien, including the Notice of Mechanic's Lien, as prescribed by this section, shall cause the mechanic's lien to be unenforceable as a matter of law.

SEC. 2. Section 3146 of the Civil Code is amended to read:

3146. After the filing of the complaint in the proper court to foreclose on the mechanic's lien, the plaintiff shall record in the office of the county recorder of the county, or of the several counties in which the property is situated, a notice of the pendency of the proceedings, as provided in Title 4.5 (commencing with Section 405) of Part 2 of the Code of Civil Procedure on or before 20 days after the filing of the mechanic's lien foreclosure action. Only from the time of recording that notice shall a purchaser or encumbrancer of the property affected thereby be deemed to have constructive notice of the pendency of the action, and in that event only of its pendency against parties designated by their real names.

SEC. 3. The amendments proposed by this act shall be operative on January 1, 2011.